

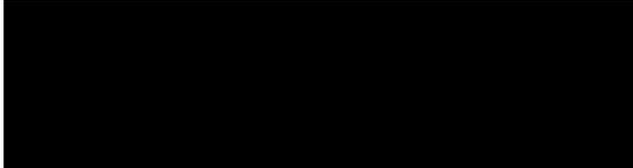
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



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Date: **JUL 05 2011** Office: CALIFORNIA SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF BENEFICIARY:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The director of the California Service Center revoked the previously approved nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected. The petition's approval will be revoked.

The petitioner is a preparatory school that seeks to employ the beneficiary in the position of financial analyst. Accordingly, the petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director approved the instant petition on April 8, 2008. Subsequently, the director was made aware of information indicating that the petitioner was not in compliance with the terms of the Labor Condition Application (LCA) submitted in support of the Form I-129, Petition for a Nonimmigrant Worker, as required by the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(B)(2). After properly issuing a notice of intent to revoke approval of the petition and reviewing the petitioner's response thereto, the director revoked approval of the petition on two independent grounds, namely: (1) the beneficiary had been employed as a math instructor and not as a financial analyst as claimed on Form I-129 and on the LCA; and (2) a bona fide employer-employee relationship no longer existed between the petitioner and the beneficiary since the beneficiary left his position with the petitioner in March 2009. On appeal, counsel attempts to overcome the basis for revocation by submitting a brief and additional evidence.

The Form G-28, Notice of Entry of Appearance as Attorney or Representative, that was submitted for the record in support of the appeal was signed by the beneficiary, not by the petitioner or an authorized representative thereof. U.S. Citizenship and Immigration Services (USCIS) regulations specifically prohibit a beneficiary of a visa petition, or a representative acting on a beneficiary's behalf, from filing a petition; the beneficiary of a visa petition is not a recognized party in a proceeding. 8 C.F.R. § 103.2(a)(3). In this case, the Form G-28 that was submitted for the record regarding Form I-290B was signed by the beneficiary in his personal capacity. The Form G-28 submitted in support of the petition was signed by Dong Yeob Shin, President of the petitioner, on April 1, 2008 and was limited to Forms I-129 and I-907. The Form G-28 submitted on appeal, however, was signed by the beneficiary on September 20, 2009, and did not list the petitioner as a party being represented by counsel in this proceeding. Further, counsel indicated on the Form I-290B that he is filing the appeal as an attorney for the beneficiary, not the petitioner.

An appeal filed by a person or entity not entitled to file it must be rejected as improperly filed. 8 C.F.R. § 103.3(a)(2)(v)(A)(I). As the beneficiary and his counsel are not recognized parties, counsel is not authorized to file an appeal. *Id.*; 8 C.F.R. § 103.3(a)(1)(iii)(B).

As the appeal was not properly filed, it will be rejected. 8 C.F.R. § 103.3(a)(2)(v)(A)(I).

ORDER: The appeal is rejected. The petition is revoked.